84-1778 (1)

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CASE NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

PINE HILL CIVIC CLUB, INC., ROBERT CHEPONIS, H. EARLE GARVIN, MARGUEREE GORDON, GLEN E. MOOREHOUSE, DR. ROSEMARIE MORWESSEL, FRANK NELSON, MILTON ROTH, WALTER G. SHOCKLEY, LYNDA SHOCKLEY, AND ALBERT H. SPITLER,

APPELLANTS,

V.

DEKALB COUNTY, GEORGIA, MANUEL MALOOF, CHAIRMAN, BOARD OF COMMISSIONERS, DEKALB COUNTY; JOHN EVANS, ROBERT E. LANIER, LIANNE LEVETAN, BRINCE H. MANNING, III, JIM PATTERSON, AND JEAN WILLIAMS, BOARD OF COMMISSIONERS, DEKALB COUNTY, GEORGIA; MILTON E. WARREN, DIRECTOR, DEKALB COUNTY DEVELOPMENT DEPARTMENT; CHARLES COLEMAN, DEPUTY DIRECTOR, DEKALB COUNTY PLANNING DEPARTMENT: TOCO HILL, INC.; AND THE CALIBRE COMPANY OF GEORGIA, INC.,

APPELLEES.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

I. WHETHER THE DEKALB COUNTY, GEORGIA CODE VIOLATES THE EQUAL PROTECTION CLAUSE AND DISCRIMINATES AGAINST PROPERTY OWNERS WHO LIVE OUTSIDE OF DEKALB COUNTY BY REQUIRING THAT ONLY DEKALB COUNTY RESIDENTS ARE ENTITLED TO WRITTEN NOTICE OF A PROPOSED REZONING?

II. WHETHER THE DEKALB COUNTY, GEORGIA CODE VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT BY FAILING TO PROVIDE ACTUAL NOTICE OF A REZONING OF REAL PROPERTY TO ALL ABUTTING PROPERTY OWNERS?

III. WHETHER THE DEKALB COUNTY, GEORGIA CODE WAS UNCONSTITUTIONALLY APPLIED TO VIOLATE THE APPELLANTS' RIGHT TO EQUAL PROTECTION AND DUE PROCESS UNDER THE FOURTEENTH AMENDMENT?

PARTIES BELOW

The only parties in the Supreme Court of Georgia were the Pine Hill Civic Club, Inc., a non-profit Georgia corporation, Robert Cheponis, H. Earle Garvin, Margueree Gordon, Glen E. Moorehouse, Dr. Rosemarie Morwessel, Frank Nelson, Milton Roth, Walter G. Shockley, Albert H. Spitler, DeKalb County, Georgia, Manuel Maloof, Chairman, Board of Commissioners, DeKalb County; John Evans, Robert E.

Lanier, Lianne Levetan, Brince H. Manning, III, Jim Patterson, and Jean Williams, Board of Commissioners, DeKalb County, Georgia; Milton E. Warren, Director, DeKalb County Development Department; Charles Coleman, Deputy Director, DeKalb County Planning Department; Toco Hill, Inc.; and The Calibre Company of Georgia, Inc.

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OFFICIAL REPORT

The Official Report of the Supreme Court of Georgia in this action can be found at 254 Ga. 20, 326 S.E.2d 214 (1985).

JURISDICTION

(i) Nature Of The Proceeding

This appeal involves the rezoning of a 6.9 acre tract of real property, which is located on Shady Valley Drive in DeKalb County, Georgia, but which abuts real property located in Fulton County, Georgia (hereinafter referred to as the "Property"). Prior to the holding of any public hearings on the rezoning, DeKalb County, Georgia provided actual notice of the rezoning application to abutting DeKalb County property owners by mail. The written notice advised the abutting DeKalb County property owners of the application for the rezoning and the location and time for public hearings before the Planning Commission and the Board of Commissioners.

On May 25, 1983, the Property, which had previously been zoned for single detached residential units, was rezoned by the DeKalb County Board of Commissioners to allow eight attached residential units per acre. Appellants filed suit on June 23, 1983, for the purpose of setting aside the rezoning on the grounds that DeKalb County had failed to provide actual notice to the Fulton County abutting property owners, that Section 11-2367(c) of the DeKalb County Code and Zoning Ordinance (hereinafter referred to as the "Ordinance") was unconstitutional, that the Ordinance was unconstitutionally applied and that the Board of Commissioners had abused their discretion in rezoning the subject Property.

Both the Appellants and the Appellees filed cross-motions for summary

judgment before the Superior Court of DeKalb County on the issue of whether proper notice was granted to Appellants Rosemarie Morwessel and Glen E. Moorehouse. The Superior Court of DeKalb County ruled that DeKalb County, Georgia was required under the Ordinance to provide actual notice to the adjoining Fulton County property owners, as it had provided to the adjoining DeKalb County property owners. (Appendix B). The Appellees appealed the decision of the Superior Court of DeKalb County to the Court of Appeals for the State of Georgia, which transferred the case to the Supreme Court of Georgia because of the constitutional issues presented. The Supreme Court of Georgia reversed the decision of the Superior Court of DeKalb County and held that the Or-

dinance was constitutional and did not violate either the Equal Protection Clause or the Due Process Clause of the Fourteenth Amendment to the United States Constitution. (Appendix A). A challenge to the constitutionality of the Ordinance has been presented throughout all proceedings and these issues are presented for review on appeal here.

(ii) Judgment Below

The Supreme Court of Georgia entered the judgment appealed from on February 20, 1985.

The Notice of Appeal for review by this Court was filed in the Supreme Court of Georgia on March 11, 1985.

(iii) Jurisdiction Of This Court

Section 1257(2), Title 28, U.S. Code vests jurisdiction in this Court

because the final judgment below upheld a state statute and its application against Federal claims of unconstitutionality. The judgment of the Supreme Court of Georgia addressed the Appellants' Federal claims, and is therefore properly the subject of this Appeal. Cox Broadcasting Corp. vs. Cohn, 420 U.S. 469 (1975).

STATUTE INVOLVED

The zoning ordinance in question is Section 11-2367(c) of the DeKalb County Code which is set forth below:

> The Planning Department shall give notification of the request for the application by regular mail to all abutting property owners as shown by the county tax records. Such notification shall be mailed at least 15 days prior to the Planning Commission Public Hearing and shall include a description of the application and date, time and place of public hearings.

STATEMENT OF THE CASE

FACTS

On March 24, 1983, Calibre Company of Georgia, Inc. (hereinafter referred to as "Calibre") filed an application to amend the zoning map of DeKalb

County, Georgia which requested the rezoning of the Property from a classification of R-85 to RM-100 (conditional) (hereinafter referred to as the "Application").

Pursuant to the Application and its plans, Calibre sought to construct single, attached residential dwellings on the Property, which is centered in a well-established community of single detached residential homes. Although Calibre did not own the Property on March 23, 1983, it was authorized by the owner of the Property, Toco Hill, Inc. (hereinafter referred to as "Toco Hill") to file the Application.

The Application was an attempt to construct single attached dwellings on the Property, resulting in a higher density of units and persons for the Property than is possessed by the

surrounding established residential community. In essence, Calibre's Application constituted a classic example of "spot zoning".

The DeKalb County Planning Department (hereinafter referred to as the "Planning Department") evaluated the Application but did not recommend the adoption of the RM-100 zoning classification. Instead, the Planning Department recommended a classification of R-85, a lower density classification, which was more consistent with the single detached residential units in the surrounding geographical vicinity.

On or about April 10, 1983, the Planning Department mailed written notification of the Application to all abutting DeKalb County property owners by regular mail pursuant to Section

11-2367(c) of the Ordinance. Various property owners with real property in Fulton County, Georgia, including Appellants Moorehouse and Morwessel, abut the Property at its rear where the DeKalb County -- Fulton County boundary line lies. It is undisputed that Appellants Moorehouse and Morwessel own and reside on real property which abuts the Property and that they did not receive written notification of the Application pursuant to Section 11-2367(c) of the Ordinance.

On May 5, 1983, the Application was presented to the DeKalb County Planning Commission, which, over the objection of those Appellants present, voted five to one to not make a recommendation regarding the Application.

The Application was heard by the DeKalb County Board of Commissioners on

May 24, 1983, whereupon the DeKalb County Board of Commissioners, over the objections of those Appellants present, voted four to three to rezone the Property for an R-A8 classification. As a direct result of the reclassification, each of the Appellants will suffer a substantial devaluation of his or her real property of no less than $10,000.00 per property owner, an injury directly related to the approximate location of their real property to the Property.

It is also undisputed that Appellant Morwessel did not possess personal knowledge of the Application until after the final decision of the DeKalb County Board of Commissioners on May 24, 1983, and had she received such notice, she would have attended the hearings and expressed her personal

opposition to the Application to protect her property from deviation.

WHEN AND HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

Counsel raised, argued and preserved each of the federal questions whenever appropriate below. Both the Superior Court of DeKalb County and the Supreme Court of Georgia expressly ruled upon each federal question presented. At the hearing before the Superior Court of DeKalb County, Georgia, counsel for both Appellants and Appellees addressed the equal protection and due process arguments. The Superior Court of DeKalb County held that in order to uphold the validity of Section 11-2367(c), it was required to interpret the Ordinance as requiring actual notice by mail to the Fulton County residents and that the

failure to provide actual notice to the Fulton County adjoining property owners invalidated the rezoning.

Before the Supreme Court of Georgia, Appellants argued that to interpret the Ordinance as providing only actual notice to DeKalb County, Georgia residents would be a violation of the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment. The Supreme Court of Georgia held that the Equal Protection Clause and the Due Process Clause were satisfied by publication in a DeKalb County newspaper.

THE QUESTIONS ARE SUBSTANTIAL

This appeal presents substantial federal questions which have not been formally decided by this Court, although they have been addressed by various state courts which have

rendered decisions contrary to the holding of the Supreme Court of Georgia in this action and therefore a significant inconsistency now exists amongst the States. In addition, on each of these questions, the decision of the Georgia Supreme Court conflicts with the reasoning, if not the holdings, of one or more important prior decisions of this Court.

The questions presented also bear a significant impact on the interplay between the Fourteenth Amendment and local municipal and state laws regarding zoning, especially in the metropolitan areas of our nation, where the impact of zoning is greatest.

I. The Georgia Supreme Court Erred In Holding That The Ordinance Did Not Violate The

Equal Protection Clause Of The Fourteenth Amendment.

The first question presented in this appeal is whether a governmental entity, such as DeKalb County, Georgia, can provide for actual notice of a rezoning of real property to one class of individuals, who reside within its boundaries, but provide only for constructive notice to similarly situated individuals who reside outside its governmental boundaries and who will be affected to the same extent and degree as those individuals residing within its governmental boundaries.

The Superior Court of DeKalb County held that to interpret Section 11-2367(c) as providing written notice only to DeKalb County residents, as suggested and contested by Appellees, would violate the right of similarly

situated Fulton County property owners and residents to equal protection under the law. The Supreme Court of California addressed the same issue in Scott vs. City of Indian Wells, 6 Cal.3d 541, 99 Cal.Rptr. 745, 492 P.2d 1137 (1972), and concluded, in direct contrast to the Supreme Court of Georgia's decision in this action, that the governmental entity must provide the same type of notice to both groups of similarly situated individuals, regardless of the fact that one group resides outside the jurisdictional boundary of the governmental entity.

In Scott, the abutting property owners, who were located outside the governmental jurisdiction where the land to be rezoned was located, challenged the rezoning of the subject property on various grounds, including the failure to provide the affected

neighbors with actual notice. The Supreme Court of California concluded that the nonresident affected property owners were entitled to the same notice as was received by their similarly situated neighbors who resided in the rezoning jurisdiction:

> We are satisfied that the City of Indian Wells owes adjoining landowners who are not city residents a duty of notice to the extent given similarly situated city residents, a duty to hear their views, and a duty to consider the proposed development with respect to its effect on all neighboring property owners. We are also satisfied that adjoining landowners who are not city residents may enforce these duties by appropriate legal proceedings and have standing to

challenge zoning decisions of the city which effect their property.

Id., 6 Cal.3d at 548, 99 Cal.Rptr. at 748, 492 P.2d at 1141.

The Scott court also rejected the contention of the Appellees in this appeal that a substantial interest is not at issue:

> Zoning does not deprive an adjacent landowner of his property, but it is clear that the individual's interest in his property is often affected by local land use controls, and the "root requirement" of the Due Process Clause is "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest---

> justifies postponing the hearing until after the event. (Boddie v. Connecticut, 401 U.S. 371, 379 (1971), emphasis in original, footnotes omitted).

Scott vs. City of Indian Wells, 6 Cal.3d at 548, 99 Cal. Rptr. at 748, 492 P.2d at 1141-1142.

The decision of the Supreme Court of California was based on the prior decisions of other state courts, which have held that non-resident adjoining property owners have standing to challenge the rezoning and are entitled to be heard. The earliest of these decisions was rendered in Cresskill Borough vs. Dumont Borough, 28 N.J. Super. 26, 100 A.2d 182 (1953), aff'd, 15 N.J. 238, 104 A.2d 441 (1954), where the Supreme Court of New Jersey held that the interests and voices of effected non-resident property owners

must be heard alongside those of resident property owners:

> At the very least Dumont owes a duty to hear any residents and taxpayers of adjoining municipalities who may be adversely affected by proposed zoning changes and to give as much consideration to their rights as they would to those of residents and taxpayers of Dumont. To do less would be to make a fetish out of invisible municipal boundary lines and a mockery of the principles of zoning.

Cresskill Borough v. Dumont Borough, 15 N.J. at 247, 104 A.2d at 445.

In Koppel vs. City of Fairway 189 Kan. 710, 371 P.2d 113 (1962), the Supreme Court of Kansas held that a statute that allowed property owners in the front and rear of the property to

be rezoned the right to be heard applied to all affected property owners, and not only those who resided in the jurisdiction of the municipal government which was to rezone the property.

In the present action, the evidence indicated that all the adjoining property owners who are parties to this action would suffer damages of no less than $10,000.00 to the value of their homes as a result of the rezoning. It was clear that each of them, regardless of their county of residence, had standing under Georgia law to bring an action against the Appellees and to seek the invalidation of the rezoning. See, DeKalb County vs. Wapensky, 253 Ga. 47, 315 S.E.2d 873 (1984). However, although these individuals may have the right to challange the decision of the DeKalb County Board of Commissioners,

the Georgia Supreme Court held that they were not entitled to actual notice of the rezoning as was received by their DeKalb County counterparts.

The Georgia Supreme Court did not conduct any constitutional analysis within its two-page opinion to determine whether the Equal Protection Clause had been violated but instead concluded, based upon a prior opinion in F.P. Plaza, Inc. vs. Waite, 230 Ga. 161, 196 S.E.2d 141 (1973), which lacked the same analysis, that notice by publication of a rezoning hearing to be held by a governing authority satisfied the requirements of procedural due process and equal protection. (Appendix A). Based on that statement, without any additional authority or justification, the Supreme Court of

Georgia held that there was no constitutional deficiency within the Ordinance.

A close examination of the Waite decision indicates various significant factual and legal factors which distinguish it from the present action and indicate that its language is not now constitutionally valid.

In Waite, written notice of the hearing before the Fulton County Planning Commission was sent to affected Fulton County residents but not to affected DeKalb County residents. No publication was involved at this hearing level. The Supreme Court of Georgia held that the hearing at the Planning Commission was not one where a final decision would be made and therefore concluded that defective notice of this hearing was not violative of

procedural due process or the Equal Protection Clause.

As to the final hearing before the Board of Commissioners in Waite, only published notice was provided to all, thus no equal protection issue was presented at that level. In the present action, DeKalb County abutting property owners received actual notice of the final hearing while their Fulton County counterparts did not. Thus, Waite is of no assistance in addressing the equal protection arguments.

In addition, it is important to note, that the zoning ordinances at the time were in keeping with statutory provisions enacted by the General Assembly, which only provided for notice of the final hearing by publication. See, Ga. L. 1968, p. 3769;

F.P. Plaza, Inc. vs. Waite. 230 Ga. at 163, 196 S.E.2d at 143. Thus, the Supreme Court concluded that based on the above statute, that the citizens of this state were not legally entitled to any notice other than by publication.

A thorough review of Willingham vs. White, 229 Ga. 75, 189 S.E.2d 442 (1972), cited by the Waite court and Atlantic Refining Co. vs. Spears, 214 Ga. 126, 103 S.E.2d 547 (1958) cited by Willingham, indicates that no appellate court in Georgia has ever addressed the equal protection or due process questions raised in this action as to whether constructive notice to abutting property owners in a zoning action is constitutionally sufficient while their neighbors receive actual notice. In addition, it must be pointed out that the statutory provisions upon which

these rulings are based are no longer in effect as a result of the above statutory provisions being repealed when greater zoning authority was ceded to local authorities.

The Waite case specifically cites the Willingham decision for the legal proposition that the Supreme Court had previously held "that such notice by publication is all that affected property owners are entitled to ..." F.P. Plaza, Inc. vs. Waite 230 Ga. at 163, 196 S.E.2d at 143. However, an examination of the Willingham decision indicates how the Court determined that constructive notice by publication was all that the property owners were entitled to:

> The Georgia statute (Ga. Code Ann. §69-1209) pursuant to which the 1963 ordinance was enacted

provides that before enacting the zoning ordinance the governing authority shall hold a public hearing thereon, 'at least 15 days' notice of the time and place of which shall be published in a newspaper of general circulation in the municipality or county.' The evidence before the trial showed that the proper notice was given making reference to related maps designated as "Comprehensive Zoning Maps," and the subject property was included on the maps referred to.

It is therefore clear that the required notice was given, and the subject property was referred to in the required notice. <u>This is all that property owners are entitled to under the statute</u> and their legal or constitutional rights are

not violated by the zoning of the property when such notice is given. See, Atlantic Refining Co. vs. Spears, 214 Ga. 126.

Willingham vs. White, 229 Ga. at 75, 189 S.E.2d at 442.

In Atlantic Refining Co., the Supreme Court held that a rezoning was invalid because the zoning authority published its notice 10 days prior to the hearing in violation of the statute. All three of these decisions, Waite, Willingham and Atlantic Refining turn upon former statutes, and do not question the requirements set forth by the General Assembly.

Before the Supreme Court of Georgia the Appellees contended that no violation of the Equal Protection Clause existed because the existence of the county boundary line was a rational

basis upon which to differentiate in providing actual notice. This position was of course rejected by Scott, Cresskill and Koppel.

This Court has held that classification of individuals for the purpose of legislation must be reasonable and not arbitrary and must rely upon some differential which has a fair and substantial relation to the object of the legislation, in order that all persons of similar circumstances are treated alike. F.S. Royster Guano Co. vs. Commonwealth of Virginia, 253 U.S. 412 (1937).

In this action, the Fulton County abutting property owners stand to be injured to the exact degree as their DeKalb County neighbors, who reside only a few feet from them, and to view the county line as a rational distinction for the purpose of providing

actual notice, would indeed make a fetish out of the bounary line and zoning in multi-jurisdictional metropolitan communities.

II. The Georgia Supreme Court Erred in Upholding the Constitutionality of the Ordinance Where it Violated the Due Process Clause.

The Appellants further challenged the constitutionality of the Ordinance on the grounds that it violates the Due Process Clause of the Fourteenth Amendment. This Court has repeatedly held that it is a fundamental premise of our judicial system that no individual shall be deprived life, liberty, or property except by due process of law.

This Court has also recognized that the legal process of zoning has a

substantial effect upon the property interest of those owners of real property which is either the subject of rezoning or it is located nearby to the property which is the subject of the rezoning and that they are entitled to procedural due process. See, City of Euclid, Ohio vs. Ambler Realty Co., 272 U.S. 365 (1926).

At both the trial level and at the appellate level, the Appellants have relied on this Court's decision in Mennonite Board of Missions vs. Adams, ____ U.S. ____, 103 S.Ct. 2706 (1983), whereby this Court held that before a State conducts any proceeding that will affect the property interest of any party, the state must provide notice to the party by a method certain to insure actual notice, if the

identity of the affected party is reasonably ascertainable:

> Notice by mail or other means as certain to insure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect liberty or property interest of any party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable.

Mennonite Board of Missions vs. Adams, ____ U.S. at ____, 103 S.Ct. at 2712.

The Mennonite decision continues the series of decisions of this Court which have required actual notice prior to governmental action. These decisions find their modern foundation in Mullane vs. Central Hanover Bank &

Trust Company, 339 U.S. 306 (1950), in which this Court held that published notice of an action to settle the account of a common trust fund was not sufficient to inform beneficiaries of the trust whose names and addresses were available. The use of notice through publication was found to be woefully inadequate:

> Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper and if he makes his home outside the area of the newspaper's normal circulation, the odds that the information will never reach him are large indeed. The chance of actual notice is further reduced when as here the notice required does not name those whose attention

> it is supposed to attract, and does not inform acquaintances who might call it to attention. In weighing its sufficiency on the basis of equivalence with actual notice, we are unable to regard this is more than a feint.

Mullane vs. Central Hanover Bank & Trust Company. 339 U.S. at 315.

Since its decision in Mullane, this Court has continually maintained in a variety of legal circumstances that actual notice is required before legal action, where the identity and location of interested parties can be reasonably ascertained. See, City of New York vs. New York, N.H. and H.R. Company, 344 U.S. 293 (1953); Coney vs. Somers, 351 U.S. 141 (1956); Walker vs. City of Hutchinson, 352 U.S. 112 (1956); Schroeder vs. City of New York, 371

U.S. 208 (1962); Bank of Moien vs. England, 385 U.S. 99 (1966); Memphis Light Gas & Water Division vs. Kraft, 436 U.S. 1 (1978); and Greene vs. Lindsey, 456 U.S. 444 (1982).

These decisions demonstrate that in order to determine whether actual notice is required in a certain legal setting, the governing entity or the reviewing court must apply the analysis of Mullane and make a determination as to the property interest involved, the impact it will have upon the effected parties, the burden placed upon the governmental entity in order to ascertain the identity of the parties and the cost of such notice to the governmental entity. What has been lacking in the Supreme Court of

Georgia's analysis of this problem, as evidenced by both the Waite decision and the decision in this action, is that the Mullane analysis has never been applied. Rather, the Supreme Court of Georgia based its decision in Waite and subsequently in this decision, on a statute that the General Assembly had enacted in 1969 and which was repealed in the 1970's prior to the present action, which provided for notice of a rezoning by application. However, at no point has any Georgia judicial body applied Mullane in determining whether actual notice to abutting property owners is required in a rezoning. The Supreme Court of Georgia concluded that since the General Assembly had provided for notice by publication that such notice

was sufficient and no further analysis was required.

It is the contention of the Appellants that it is mandated by the Fourteenth Amendment that an analysis be conducted as to what is sufficient and appropriate notice in this situation, regardless of what the Georgia General Assembly previously thought was appropriate and has subsequently repealed. It must be noted that while the General Assembly of Georgia may have believed in the 1960's that notice by publication was adequate, the County of DeKalb, Georgia concluded otherwise and provided actual notice to abutting property owners. Appellants contend that any proper application of Mullane leads one to conclude that actual notice by mail is not only an inexpensive and effective

method by which affected property owners may be notified of a rezoning, it is the method of notice mandated by the Due Process Clause.

III. The Georgia Supreme Court Erred in Holding That the Ordinance was not Unconstitutionally Applied to the Fulton County Residents.

Appellants have maintained in the Courts below that the Ordinance should be interpreted as providing actual notice to all abutting property owners regardless of their county of residence in order to uphold the constitutionality of the Ordinance and avoid the inherent violations of the Due Process Clause and the Equal Protection Clause. The Superior Court of DeKalb County, in an effort to uphold the constitutionality of the Ordinance held that it was to be applied to all

abutting owners and the county's failure to notify the Fulton County adjoining property owners was an unconstitutional application of the Ordinance. Appellees maintain in this appeal that the Ordinance can be given an interpretation that does not violate the Equal Protection Clause and the Due Process Clause, if the language "according to county tax records" is not viewed as a limitation on those property owners to be included, but as an administrative means to easily identify the parties to be notified. The purpose of the Ordinance was to provide actual notice of a rezoning to those who have a substantial interest involved, and that purpose would not be served by limiting it only to DeKalb County residents, unless, DeKalb County intentionally wished to provide greater

notice to its residents, a discrimination which would violate the Equal Protection Clause.

CONCLUSION

For the reason and authorities discussed above, the Supreme Court of the United States should accept jurisdiction over this appeal and reverse the decision of the Supreme Court of Georgia.

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APPENDIX A

In the Supreme Court of Georgia

Decided: February 20, 1985

41794. DEKALB COUNTY et al. v. PINE HILLS CIVIC CLUB et al.

WELTNER, Justice.

Calibre, Inc. sought to have certain property in DeKalb County rezoned for the purpose of constructing condominiums. The county gave notice of two zoning hearings by advertising in the county newspaper and posting a conspicuous sign on the property. The county also mailed written notices of the hearings to all abutting property owners in DeKalb County, pursuant to §11-2367 of the county zoning ordinance, which provides: "The plan-

ning department shall give notification of the requested application by regular mail to all abutting property owners as shown by county tax records." Abutting property owners in Fulton County--who were not so notified--brought an action, seeking to have the rezoning invalidated. The superior court declared the reclassification void because abutting property owners in Fulton County failed to receive written notification of the hearings.

1. The trial court held that notice by publication violated the due process and equal protection rights of Fulton County property owners. "[N]otice by publication of a rezoning hearing to be held by a governing authority of a county is proper and adequate insofar as the requirements of

procedural due process and equal protection are concerned. Such notice by publication puts all parties, wherever located, on notice that a public hearing will be held at the stated time and place before the governing authority which is considering an application to rezone land under the jurisdiction of the governing authority. We have held that such notice by publication is all that affected property owners are entitled to, and that their legal or constitutional rights are not violated by the rezoning of property when such notice by publication is given." F. P. Plaza, Inc. v. Waite, 230 Ga. 161, 163 (196 S.E2d 141) (1973).

Hence, notice was given to abutting property owners in Fulton

County was not constitutionally deficient.

2. It must then be determined whether the county complied with its own notification requirements to all abutting property owners "as shown by county tax records." South Jonesboro Civic Assn. et al. v. Thornton, 248 Ga. 65 (281 SE2d 507) (1981). The trial court held that the term "county" refers to any county in which such owners reside.

The county ordinance provides rules and procedures for the rezoning of property in DeKalb County, and only in DeKalb County. Further, the 1981 DeKalb County Code Adopting Ordinance provides that "[t]he word 'the county' or 'this county' shall mean DeKalb County, Georgia." While the term appearing in the questioned provision

lacks the definite or demonstrative article, we hold that it refers to DeKalb County only. To broaden it to include any county would work expansion beyond the normal scope of county ordinances.

The notice to the property owners in Fulton County was constitutionally and statutorily sufficient.

Judgment reversed. All the Justices concur.

APPENDIX B

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

PINE HILL CIVIC CLUB, INC., ROBERT CHEPONIS, H. EARLE GARVIN, MARGUEREE GORDON, GLEN E. MOOREHOUSE, DR. ROSEMARIE MORWESSEL, FRANK NELSON, MILTON ROTH, WALTER G. SHOCKLEY, LYNDA SHOCKLEY and ALBERT H. SPITLER,	)	
Plaintiffs,	)	CIVIL ACTION
v.	)	FILE NO.
DEKALB COUNTY, GEORGIA; MANUEL MALOOF, CHAIRMAN BOARD OF COMMISSIONERS, DEKALB COUNTY, JOHN EVANS, ROBERT E. LANIER, LIANNE LEVETAN, BRINCE H. MANNING, III, JIM PATTERSON, JEAN WILLIAMS, BOARD OF COMMISSIONERS, DEKALB COUNTY,GEORGIA; MILTON E. WARREN, DIRECTOR, DEKALB COUNTY DEVELOPMENT DEPARTMENT; CHARLES COLEMAN, DEPUTY DIRECTOR, DEKALB COUNTY PLANNING DEPARTMENT;	)	83-5070-1

TOCO HILLS, INC., THE)
CALIBRE COMPANY OF GEORGIA,)
INC.,)
Defendants.)

FINAL JUDGMENT

The Plaintiffs' Motion for Summary Judgment and the Defendants' Motions for Summary Judgment (that portion of the Defendants' motions challenging "standing" of Plaintiffs having been withdrawn without prejudice) having come on to be heard as regularly scheduled by the parties in this case, and after considering the evidence which has been submitted and the argument presented by counsel for the Plaintiffs and counsel for the Defendants, the Court makes the following Findings of Fact and Conclusions of Law:

I.

FINDINGS OF FACT

On March 24, 1983, Defendant Calibre Company of Georgia, Inc. (hereinafter referred to as "Calibre") filed an application to amend the Zoning Map of DeKalb County, Georgia, by rezoning 6.98 acres of real property located on the west side of Shady Valley Drive, 1500 feet south of Goodwin Road (hereinafter referred to as the "Property") from a zoning classification of R-85 to RM-100 (conditional).

2.

Section 11-2367(c) of the DeKalb County Zoning Ordinance provides as follows:

> Letters to abutting owners. The Planning Department shall give written notification of the requested application by regular

mail to all abutting property owners as shown by County tax records. Such notification shall be mailed at least 15 days prior to the planning commission public hearing and shall include a description of the application and the date, time and place of public hearings.

3.

On April 15, 1984, the DeKalb County Planning Department mailed written notices of Calibre's application to owners of real property located in DeKalb County, Georgia, whose properties abut the Property. The notices provided the date, time and place of the hearing before the DeKalb County Planning Commission and the final hearing before the DeKalb County Board of Commissioners.

4.

Plaintiffs Glen H. Moorehouse and Dr. Rosemarie Morwessel own real property in Fulton County, Georgia, which abuts the Property.

5.

The DeKalb County Planning Department did not send any written notice of Calibre's application to Plaintiffs Moorehouse and Morwessel.

6.

Plaintiff Morwessel had no knowledge of Calibre's application until after the DeKalb County Board of Commissioners had decided on May 24, 1984, by a 4-3 vote to reclassify the Property from R-85 to R-A8.

II.

CONCLUSIONS OF LAW

Plaintiffs Moorehouse and Morwessel were legally entitled to

written notification of Calibre's application from the DeKalb County Planning Department pursuant to Section 11-2367(c) of the DeKalb County Zoning Ordinance.

2.

To interpret Section 11-2367(c) of the DeKalb County Zoning Ordinance as only providing for written notification to abutting property owners who reside in DeKalb County, Georgia, would violate Plaintiffs Moorehouse and Morwessel's right to due process and equal protection under the law under both the State Constitution of Georgia and the United States Constitution.

3.

As a result of the failure of the DeKalb County Planning Department to provide written notice to Plaintiffs Morwessel and Moorehouse, the May 24,

1984, decision of the DeKalb County Board of Commissioners to rezone the Property from R-85 to R-A8 was invalid, void and of no force and effect.

IT IS HEREBY ORDERED, that Plaintiffs' Motion for Summary Judgment is granted and Defendants' Motion for Summary Judgments are denied.

SO ORDERED, this 25th day of July, 1984.

CLARENCE PEELER, Judge,
Superior Court of DeKalb County

PRESENTED BY:

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APPENDIX C

IN THE SUPREME COURT OF GEORGIA
STATE OF GEORGIA

DEKALB COUNTY, GEORGIA; MANUEL MALOOF, CHAIRMAN BOARD OF COMMISSIONERS, DEKALB COUNTY, JOHN EVANS, ROBERT E. LANIER, LIANNE LEVETAN, BRINCE H. MANNING, III, JIM PATTERSON, JEAN WILLIAMS, BOARD OF COMMISSIONERS, DEKALB COUNTY, GEORGIA; MILTON E. WARREN, DIRECTOR, DEKALB COUNTY DEVELOPMENT DEPARTMENT; CHARLES COLEMAN, DEPUTY DIRECTOR, DEKALB COUNTY PLANNING DEPARTMENT; TOCO HILLS, INC., THE CALIBRE COMPANY OF GEORGIA, INC.,	)	
Appellants,	)	APPEAL NO.
vs.	)	41794
PINE HILL CIVIC CLUB, INC., ROBERT CHEPONIS, H. EARLE GARVIN, MARGUEREE GORDON, GLEN E. MOOREHOUSE, DR. ROSEMARIE MORWESSEL, FRANK NELSON, MILTON ROTH,	)	

WALTER G. SHOCKLEY, LYNDA SHOCKLEY and ALBERT H. SPITLER,

Appellees.

NOTICE OF APPEAL

Notice is hereby given that Appellees Pine Hill Civic Club, Inc., Robert Cheponis, H. Earle Garvin, Margueree Gordon, Glen E. Moorehouse, Dr. Rosemarie Morwessel, Frank Nelson, Milton Roth, Walter G. Shockley, Lynda Shockley and Albert H. Spitler hereby appeal to the Supreme Court of the United States of America from the entire judgment entered by the Supreme Court of Georgia in the above appeal entered on February 20, 1985 upholding the validity of a state statute. Appellees maintain that the subject state statute Section 2367(c) of the DeKalb County Zoning Ordinance,

contravenes Appellees' rights to equal protection and due process under the constitution of the United States of America and Amendments thereto. This Appeal is taken pursuant to 28 U.S.C. §1257(b).

The Clerk of the Court will please omit nothing from the record for the purpose of this Appeal.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the below listed counsel in the foregoing matter with a copy of this Jurisdictional Statement by depositing same in the United States Mail in a properly addressed envelope with adequate postage thereon:

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This 10th day of May, 1985.

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Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

Case No. 84-1773

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

PINE HILL CIVIC CLUB, INC., ET AL.
Appellants,

v.

DEKALB COUNTY, GEORGIA, ET AL.
Appellees.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

APPELLEES' MOTION IN THE ALTERNATIVE TO DISMISS OR TO AFFIRM

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QUESTIONS PRESENTED

I. WHETHER THIS APPEAL IS IN A PROPER POSTURE TO BE HEARD AND DECIDED BY THIS COURT

II. WHETHER THE SUPREME COURT LACKS JURISDICTION OVER THIS APPEAL DUE TO THE ABSENCE OF A SUBSTANTIAL FEDERAL QUESTION

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STATEMENT OF FACTS

This is an appeal from a unanimous decision of the Georgia Supreme Court upholding the constitutionality of a County ordinance which requires three types of notice to be given for public hearings in connection with rezoning applications. The ordinance requires that notice of the public hearings be given (1) by publication in the County newspaper at least ten days prior to the hearing; (2) by posting a sign at a conspicuous place on the property at least fifteen days prior to the hearing; and (3) by sending mail notice to all abutting property owners in Dekalb County as shown by the County's tax records. DeKalb County, Ga., Code Section 11-2367 (1980).

Appellee, Toco Hill, Inc. ("Toco Hill"), as seller, entered into a

contract with Appellee, The Calibre Company of Georgia, Inc. ("Calibre"), as purchaser, to sell 6.9 acres of real property located on Shady Valley Road, DeKalb County, Georgia (the "Property"). The contract was contingent upon the rezoning of the Property. On March 24, 1983, Calibre filed an application asking that the Property be rezoned from R-85, which allows single family detached dwelling units, to R-100 (Conditional) for the purpose of constructing residential condominiums. In order to give all interested parties notice of the public hearings to be held by the Planning Commission and the Board of Commissioners, DeKalb County placed the appropriate advertisements in the County newspaper concerning the time, place and location of the hearings. The County

also posted a sign at a conspicuous location on the Property advertising the public hearings. Finally, written notification concerning the time, place and location of the public hearings was mailed to each DeKalb County property owner whose property abutted the subject Property (as shown by the County's tax records). The public hearings were properly conducted, and on May 24, 1983, the DeKalb County Board of Commissioners voted to rezone the Property from R-85 to RA-8, a classification which will allow the development of eight attached or detached residential dwelling units per acre.

Appellants Glen E. Moorehouse and Rosemarie Morwessel own properties in Fulton County which abut the Property. All of the Property is situated in Dekalb County, but it abuts property in

the adjacent County of Fulton. Because Appellants Moorehouse and Morwessel did not own abutting property in Dekalb County, as shown by that County's tax records, the County did not mail them a written notice of the public hearings. They could have learned about the hearings from the published notice or the sign on the Property as these were the methods of notice provided to the community in general. Appellant Moorehouse did learn about the public hearings and attended at least one of them. Appellant Morwessel did not see the sign on the Property, read the published notice, or otherwise determine when or where the public hearings would take place.

Appellants brought suit in the Superior Court of DeKalb County to have the DeKalb County Commission's rezoning

resolution declared invalid on the grounds that the Board of Commissioners abused its discretion by rezoning the Property and on the grounds that Appellees Moorehouse and Morwessel had not been given proper notice of the public hearings on the rezoning petition. Appellants Moorehouse and Morwessel asserted that they had been denied their state and federal due process and equal protection rights since they were not provided notice by mail of the public hearings while abutting property owners in DeKalb County were given notice by mail of the hearings.

The Supreme Court of Georgia reversed the trial court's grant of Appellants' motion for summary judgment and the denial of Appellees' motion for summary judgment as to the notice

issue. The case has been remanded for trial on the remaining issue of whether the Board of Commissioners manifestly abused its discretion in rezoning the Property to an RA-8 classification.

Appellants have filed this appeal pursuant to 28 U.S.C. §1257(2) (1966), alleging that they have been denied their due process and equal protection rights since they did not receive notice by mail of the public hearings, pursuant to the DeKalb County Zoning Ordinance.

ARGUMENT AND CITATION OF AUTHORITY

I. The Appeal is not in a Proper Posture to be Heard and Decided by this Court

An examination of the procedural posture of this case reveals that Appellants' federal substantive claim against Appellees is still pending in

the Superior Court of DeKalb County and that it is appropriate for the state court proceeding to be concluded before this appeal is heard. The Supreme Court only reviews final judgments or decrees rendered by the highest court of each state. 28 U.S.C. § 1257 (1966). The Georgia courts have not yet considered the ultimate question in this case. As a result, there has been no final judgment in this case from which an appeal may be taken.

The Georgia Supreme Court's decision dealt only with the notice issue and left unresolved the substantive issues in this case for determination at trial. Therefore, the Superior Court of DeKalb County must hear the case and determine whether the Board of Commissioners' rezoning decision was a manifest abuse of discretion. If the

Appellants prevail at trial, the rezoning decision will be invalidated, thereby eliminating any need for this Court to hear this appeal. If the Appellants do not prevail at trial and lose on appeal in the Georgia appellate courts, they will have grounds for another appeal to this Court. The important point is that the substantive issue in this case has not been heard or decided by the Georgia courts. Consequently, this case does not have the requisite finality for appeal to this Court pursuant to 28 U.S.C. § 1257 (1966).

A case on point is San Diego Gas & Electric Co. v. City of San Diego, 450 U.S. 621 (1981). There, appellant San Diego Gas & Electric Company brought suit against the City of San Diego, seeking damages in inverse condemnation. The California Supreme

Court vacated the court of appeal's affirmance of the trial court's award of damages, holding that the exclusive remedy was invalidation of the zoning regulation in an action for mandamus or declaratory relief. On reconsideration, the court of appeal reversed the trial court's award of damages but allowed the plaintiff to retry the case to resolve factual disputes not covered by the trial court relating to the issue of mandamus and declaratory relief. The California utility appealed to this Court, which held that there was no final decision from which an appeal could be taken, stating,

> Ever since this Court's decision in Grays Harbor Co. v. Coats-Fordney Co., 243 U.S. 251, 37 S.Ct. 295, 61 L.Ed. 702 (1917), a state court's holding that private property has been taken in violation of the Fifth and Fourteenth Amendments and that further proceedings are necessary to determine the

> compensation that must be paid has been regarded as a classic example of a decision not reviewable in this Court because it is not "final." In such a case, "the remaining litigation may raise other federal questions that may later come here." Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 127, 65 S.Ct. 1480, 89 L.Ed. 2092 (1945). This is because "the federal constitutional question embraces not only a taking, but a taking on payment of just compensation. A state judgment is not final unless it covers both aspects of that integral problem." North Dakota Board of Pharmacy v. Snyder's Drug Stores, Inc., 414 U.S. 156, 163, 94 S.Ct. 407, 412, 38 L.Ed.2d 379 (1973).

450 U.S. at 632, 633.

Similarly, in the case at bar, the trial of this action could well present additional, appealable federal issues since the thrust of Appellant's argument is a substantive due process claim based on the rezoning of the Property, an issue which has yet to be addressed by the trial court. Consequently, if they

lose at trial, Appellants can again appeal to this Court based on the federal issues. This Court should rule, as a matter of law and in the interest of judicial economy, that this case is not currently in a posture for review by this Court. It should be noted that this case does not fall within any of the four narrow exceptions to the finality requirement prescribed in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975). See also O'Dell v. Espinoza, 456 U.S. 430 (1982).

Not only is this appeal barred by the finality requirement, but it also offends the Supreme Court's policy of avoiding the premature adjudication of constitutional issues, otherwise known as the "policy of strict necessity in disposing of constitutional issues." See Minnick v. California Department of

Corrections, 452 U.S. 105, 122 (1981); Rescue Army v. Municipal Court, 331 U.S. 549 (1947). As stated above, if the Appellants prevail on the merits of this dispute at trial, the issues presented by this appeal will be moot. This appeal should be dismissed in order to avoid an unnecessary or premature decision on a constitutional issue.

In summary, this appeal does not involve a final decision and should be dismissed. Moreover, dismissal would be in accordance with this Court's policy of avoiding unnecessary and premature decisions on Constitutional issues.

II. There is no Substantial Federal Question

Appellants contend that their due process and equal protection rights have been violated as a result of the failure of the County to give them notice by

mail of the public hearings on the possible rezoning of the Property. This appeal is not the first time this question has been presented to the Court. In each previous case the Court has declined to consider the matter, choosing instead to deny certiorari or to dismiss the appeal for want of a substantial federal question. Several state courts have directly addressed the issue and have held that notice by publication of zoning hearings is constitutionally sufficient.

Perhaps the closest case on point is Karpenko v. City of Southfield, 75 Mich. App. 188, 254 N.W.2d 839 (1977), appeal dismissed (for want of a substantial federal question), 435 U.S. 919 (1978). There, the plaintiffs were neighboring and adjoining property owners of land rezoned to allow construction of a nine

story dormitory. They alleged that their due process rights had been violated since the only notice they received was by publication. The court dismissed plaintiffs' arguments and held that notice by publication was sufficient, adding that "Courts in other jurisdictions have uniformly held that notice by publication is sufficient and lack of individual mailed notice is not a denial of due process. Annot., 96 A.L.R.2d 449, sec. 4, pp. 459-461 and 96 A.L.R.2d Later Case Service, sec. 4, p. 311." 254 N.W.2d at 842. Plaintiffs also argued that they were denied equal protection since they were only provided notice by publication whereas local utilities and railroads were given notice by mail pursuant to the terms of the ordinance. Applying the rational basis test prescribed by this Court for

zoning legislation in Village of Belle Terre v. Boraas, 416 U.S. 1 (1974), the Michigan court rejected plaintiffs' equal protection claim and upheld the legislation.

Karpenko is one of several state cases holding that notice by publication is a constitutionally sufficient method of notifying all land owners, wherever situated, of public hearings before legislative zoning bodies. See National Boulevard Bank v. County of Will, 112 Ill. App. 3d 608, 445 N.E.2d 891 (1983); Rutland Environmental Protection Association v. Kane County, 31 Ill. App. 3d 82, 334 N.E.2d 215 (1975), cert. denied, 425 U.S. 913 (1976); R. A. Vachon & Son v. City of Concord, 112 N.H. 107, 289 A.2d 646 (1972); Kent v. Borough of Mendham, 111 N.J. Super. 67, 267 A.2d 73 (1970); Blackburn v. Norman

Estates, Inc., 14 Ohio Misc. 88, 232 N.E.2d 442 (1967); Frankland v. Lake Oswego, 8 Or. App. 224, 493 P.2d 163 (1972), modified on other grounds, 267 Or. 452, 517 P.2d 1052 (1973). Each of these cases was decided after the Supreme Court's landmark ruling concerning constitutionally required notice in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), and when each of these cases was brought before this Court, the petition for writ of certiorari was denied or the appeal was dismissed for want of a substantial federal question. Passero v. Zoning Commission of Norwalk, 155 Conn. 511, 235 A.2d 660 (1967), cert. denied, 390 U.S. 1004 (1968); Rutland Environmental Protection Association v. Kane County, 31 Ill. App. 3d 82, 334 N.E.2d 215 (1975), cert. denied, 425 U.S. 913

(1976); Karpenko v. City of Southfield, 75 Mich. App. 188, 254 N.W.2d 839 (1977), appeal dismissed, 435 U.S. 919 (1978).

It is hardly unexpected that this Court refused to review these cases considering the peculiarly local nature of zoning and the fact that zoning is a legislative function. Burke v. Board of Representatives, 148 Conn. 33, 166 A.2d 849 (1961); Lawton v. City of Austin, 404 S.W.2d 648 (Tex. Civ. App. 1966). In fact, this Court has consistently demonstrated a reluctance to hear federal constitutional attacks on local zoning ordinances. See, e.g., County of Imperial v. McDougal, 19 Cal. 3d 505, 564 P.2d 14, 138 Cal. Rptr. 472, appeal dismissed, 434 U.S. 944 (1977); Consolidated Rock Products Co. v. City of Los Angeles, 57 Cal. 2d 515, 370 P.2d

342, 20 Cal. Rptr. 638, appeal dismissed, 371 U.S. 36 (1962); Schroeder v. Municipal Court, 73 Cal. App. 3d 841, 141 Cal. Rptr. 85 (1977), appeal dismissed, 435 U.S. 990 (1978); Corp. of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. City of Porterville, 90 Cal. App. 2d 656, 203 P.2d 823 (1949), appeal dismissed, 338 U.S. 805 (1949); Golden v. Town of Ramapo, 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972), appeal dismissed, 409 U.S. 1003 (1972); City of Raliegh v. Moreland, 247 N.C. 363, 100 S.E.2d 870 (1957), appeal dismissed, 357 U.S. 343 (1958). Each of these zoning cases was dismissed for want of a substantial federal question despite the appellants' constitutional challenges, including freedom of speech, freedom of religion, due process, and equal

protection.

Another indication of the absence of a substantial federal question is the fact that, as stated by the court in Karpenko v. City of Southfield, supra, the state courts are in accord that due process does not require that adjoining or abutting landowners be given actual, mailed notice of public hearings on zoning matters. With regard to the Appellants' equal protection argument, this Court ruled that the rational basis test applies to zoning legislation in Village of Belle Terre v. Boraas, supra. It is difficult to imagine a more rational place for a county to make classifications among recipients of notice of public hearings than at the county's boundary line. As the Supreme Court of Georgia pointed out in its opinion in this case, a contrary

interpretation of the zoning ordinance would "work expansion beyond the normal scope of county ordinances." DeKalb County v. Pine Hills Civic Club, 254 Ga. 20, 21, 326 S.E.2d 214, 215 (1985).

CONCLUSION

Because a final decision is not present for appeal and because no substantial federal question is presented, this Court should not accept jurisdiction of this appeal or, in the alternative, this Court should affirm the decision of the Georgia Supreme Court.

This the 12th day of September, 1985.

Respectfully submitted,

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Pursuant to Rule 28.1 of the Rules of the Supreme Court, Appellees show the Court that corporate Appellee Toco Hill, Inc. has no parent companies, subsidiaries or affiliates.

Furthermore, Appellee The Calibre Company of Georgia, Inc. has no subsidiaries or affiliates but does have a parent company by the name of Calibre Companies, Inc.

CERTIFICATE OF SERVICE

This is to certify that I have this day served Counsel for the Appellants in the foregoing matter with a copy of Appellees' Motion in the Alternative to Dismiss or to Affirm pursuant to Rules 16 and 28 of the Rules of the Supreme Court of the United States by depositing a copy of same in the United States First Class Mail in a properly addressed envelope with adequate postage affixed thereon addressed to:

William F. Clark, Esq.
Frankel, Hardwick, Tannenbaum, Fink & Clark, P.C.
3272 Peachtree Road, N.E.
Suite 400
Atlanta, Georgia 30305
Attorney for Appellants

This the 12th day of September, 1985.

David H. Flint

DAVID H. FLINT
Attorney for Appellee Toco Hill, Inc.